

## **PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTY PROGRAM**

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APPENDIX A TO PART 67—TECHNICAL SUPPORT DOCUMENT

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AUTHORITY: Sec. 120 of the Clean Air Act, as amended, 42 U.S.C. 7420, unless otherwise noted.

SOURCE: 45 FR 50117, July 28, 1980, unless otherwise noted.

### **Subpart A—Purpose and Scope**

#### **§67.1 Purpose and scope.**

This part describes the standards and procedures under which EPA will approve State programs for administering the noncompliance penalty program under section 120 of the Clean Air Act and will evaluate actions taken by States with approved programs. Subpart A describes the purpose of the part. Subpart B states the conditions under which EPA will approve State programs to administer the noncompliance penalty provisions. Subparts C and D state when and how EPA will issue its own notices to owners or operators of sources in States with approved programs, and how it will review

State decisions to grant or deny exemptions from the penalty. Finally, subpart E states how EPA will review State assessments of a penalty.

### **Subpart B—Approval of State Programs**

#### **§67.11 Standards for approval of State programs.**

(a) The Administrator shall approve any program submitted by a State, or by a local governmental agency where no program has been submitted by a State, for administering the noncompliance penalty provisions of section 120 of the Clean Air Act upon finding that the program conforms to the requirements of the Act and to those of this part and 40 CFR part 66. References to “State program” in this part shall be read as including local governmental agencies and their programs.

(b) The Administrator shall not approve any State program that does not provide explicitly for:

(1) Issuance of a notice of noncompliance, in a manner consistent with procedures under part 66, upon discovery by the State or upon notification by EPA of a violation of applicable legal requirements, which notice satisfies the informational requirements set forth in § 66.13.

(2) Levels of staffing and funding satisfactory, in the judgment of the Administrator, to implement and enforce the requirements of section 120 in that State, together with adequate provision for maintaining such levels;

(3) A capability to carry out the financial analysis and procedures specified in these regulations and the Technical Support Document, Instruction Manual, and related Computer Program, available from the Director of Stationary Source Compliance Division, EN-341, 401 M Street, NW., Washington, DC 20460, together with adequate provision for maintaining such capability. Such capability may be provided by trained State personnel or through qualified contractors;

(4) Except as provided in paragraph (a)(6) of this section, an administrative hearing whenever the owner or operator of a source submits a petition for reconsideration of a notice of noncompliance on the ground that the source either is not in violation of applicable legal requirements, or is entitled to an exemption, or both, or submits a petition to challenge a recalculation of the penalty by the State, provided that such petitions raise issues of fact that would require a hearing under part 66. This hearing need not conform to the requirements of 5 U.S.C. 554 as long as its procedures provide for:

(i) An initial decision by the hearing officer on the record;

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(ii) A hearing officer who has not performed investigative or litigating functions in any enforcement action against the source owner or operator in question;

(iii) Opportunity for public participation on reasonable notice, including intervention, by interested persons;

(iv) Opportunity for cross-examination or an equivalent opportunity for confrontation between persons advocating differing positions on material factual matters; and

(v) An initial decision by the hearing officer within ninety days of commencement of the hearing unless such period is extended upon agreement of the parties.

(5) Explicit provision for:

(i) Notice to the Administrator of any determination granting an exemption, or finding a source in violation of applicable legal requirements, and any penalty calculation and payment schedule approved or calculated by the State, together with any information necessary to verify its accuracy;

(ii) Within 30 days of receipt of a request from the Administrator, transmission of a copy of the record of the hearing held under paragraph (a)(4) or (6) of this section, including any proffered evidence and a ruling on its admissibility and the State's decision on the merits; and

(iii) Additional reporting and recordkeeping, if necessary, adequate to enable the Administrator to review the State's administration of the program and determine whether it conforms to the Act and to part 66 of these regulations. Such requirements will be specified in the Notice of Delegation to the State.

(6) A hearing on the question of whether the owner or operator of a source is entitled to an exemption pursuant to § 66.32 or 66.33 may be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions to the petitioner by members of the public shall be afforded. A record of the hearing shall be made, and the decision of the hearing officer made in writing within a reasonable period of time after the close of the hearing.

(c) The State may delegate all or part of its responsibilities under its program to a local governmental agency to implement the program within the jurisdiction of the local agency, *Provided* that the program of the local government agency meets the requirements of this section.

(d) No State penalty program or program of one of its agents shall be disapproved because it is more stringent than the program established by part 66 or by section 120 where the State or local agent concludes that it has independent authority

under State or local law to implement and administer the more stringent portions of the program.

[45 FR 50117, July 28, 1980, as amended at 54 FR 25259, June 14, 1989]

## § 67.12 Application for approval of program.

A state that wishes to administer a section 120 program shall submit an application in writing to the Administrator describing its proposed program. All necessary supporting materials shall accompany the application.

## § 67.13 Approval.

(a) The Administrator shall evaluate any application submitted under § 67.12 and shall:

(1) Approve the program and delegate authority to the State to administer the program if he determines that the requirements of § 67.11 have been and will be met; or

(2) Request additional information if he determines that the information submitted is not sufficient to allow him to determine whether the requirements of § 67.11 have been and will be met; or

(3) Disapprove the State program if he determines that the information submitted establishes that the requirements of § 67.11 have not been or will not be met.

(b) The Administrator shall notify the State in writing of his action under paragraph (a) of this section and shall state the reasons for his action.

(c) In all cases of delegation (whether or not express provision is made in the notice of delegation) the Administrator shall retain continuing authority to issue notices of noncompliance, review exemption requests or penalty calculations, or take any other steps set forth in part 66 to assess and collect these penalties. Such authority shall be exercised pursuant to the provisions of § 67.21.

(d) The Administrator shall retain exclusive authority to assess and collect penalties against source owners or operators of facilities in the State who were issued notices of noncompliance pursuant to part 66 prior to the effective date of the delegation, except to the extent the Administrator specifically delegates such authority to the State.

## § 67.14 Amendments to the program.

A State or local agent with a program approved pursuant to § 67.13 may propose amendments to that program to the Administrator. The Administrator shall evaluate whether the State or local agent's program as amended would conform to the requirements of § 67.11 and shall respond as provided in § 67.13.

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### § 67.15 Revocation.

If the Administrator determines that a State with a program approved under § 67.13 is not administering the program in conformity with the requirements of the Act or § 67.11, or the delegation of authority, he shall provide the State written notice of that determination, setting forth his reasons. Copies of all supporting materials shall accompany the notice if requested, or shall be placed on file in the appropriate Regional Office and made available for inspection during normal business hours. The State shall have 90 days in which to respond in writing to this determination. If the Administrator finds after reviewing the State response that (a) the State is in fact administering the program in conformity with § 67.11, or (b) there are reasonable grounds to believe the State program will immediately be brought into conformity with that section, he shall withdraw his determination. If he finds that neither of these conditions has been met, he shall withdraw the delegation of authority to the State.

### Subpart C—Federal Notice of Noncompliance to Sources in States With Approved Programs

#### § 67.21 Federal notice of noncompliance to owners or operators of sources in States with approved programs.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source in a State with an approved program if he determines that the State or its local agent has failed to issue such notice, provided that he shall first give 30 days notice to the State of his intent to issue a notice of noncompliance to the owner or operator of the source in question unless the State or its agent does so first. Any notice issued by the Administrator pursuant to this section shall be deemed to be issued pursuant to the provisions of part 66.

(b) The issuance of a notice of noncompliance shall operate to withdraw EPA delegation of authority to the State with respect to the particular facility in question.

(c) If the Administrator determines that the State or local agent has issued a notice of noncompliance but has failed to pursue diligently subsequent steps for the assessment and collection of the penalty, he shall notify the State of his intent to withdraw delegation of authority to the State with respect to the facility in question and take appropriate actions pursuant to part 66 unless the State or local agent, within 30 days, takes appropriate action in accordance with the requirements

of this part. In either case the penalty will be calculated from the date of the State notice.

### Subpart D—EPA Review of State Compliance or Exemption Decisions

#### § 67.31 Review by the Administrator.

(a) The Administrator may, on his own initiative, review any determination by a State or its agent that a source owner or operator is or is not in compliance with applicable legal requirements or is or is not entitled to an exemption, to determine whether that determination conforms to the requirements of the Act and part 66 (as modified by § 67.11).

(b) The Administrator shall review any such determination upon receipt of a petition alleging that the State's determination does not conform to the requirements of the Act and part 66 (as modified by § 67.11). Such petition must be filed within 20 days of issuance of the State's decision.

(c) The Administrator shall give notice in writing to the State or local agent, to the owner or operator of the source, and to the petitioner of his intent to review the determination. Such notice shall be given within 90 days of the Administrator's receipt of the State or local agent's determination. Unless otherwise provided, such notice shall not withdraw EPA's delegation of authority to the State or local agent over the particular facility in question.

(d) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by § 67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(e) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

#### § 67.32 Procedure where no formal State hearing was held.

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or entitled to an exemption for which no hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator shall evaluate the accuracy and ade-

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quacy of the documents transmitted to him pursuant to § 67.11(b)(5) and shall invite submission of comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator presented information which, if true, would have altered the owner or operator's liability for a penalty, he shall upon notice to the State or local agent schedule a hearing in accordance with subpart E of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the State determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11), he shall by written notice revoke the determination. Such revocation shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question. The source owner or operator may then petition for review of the Administrator's decision pursuant to the provisions of § 66.13.

(d) Unless otherwise provided in the Administrator's notice to the State or local agent, any non-compliance penalties owed by the source owner or operator shall be paid to the State or local agent. The Administrator shall send a copy of this notice to the source owner or operator.

### **§ 67.33 Procedure where a formal State hearing was held.**

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or is entitled to an exemption for which a hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator concludes that the State determination conformed to the requirements of the Act and of part 66 (as modified by § 66.11), the Administrator's determination shall constitute final administrative action by EPA under authority of Section 120. If the Administrator finds that the State determination did not conform to the require-

ments of the Act and of part 66 (as modified by § 67.11), the findings shall constitute proposed findings and the notice shall invite participants to file exceptions thereto. If the Administrator considers it desirable, he may schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument pursuant to paragraph (b), the Administrator shall affirm, modify, or revoke his proposed findings that the State's determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11). The decision shall be in writing. Notice and a copy of the decision shall be provided to the source owner or operator and to all other participants in the State hearing. The decision shall constitute a final administrative action by EPA under authority of section 120.

(d) If the Administrator finds that deficiencies in the hearing record prevent him from determining whether the determination of the State or local agent conformed to the requirements of the Act and part 66 (as modified by § 67.11), he shall notify the State or local agent of his finding and specify what deficiencies exist and schedule a hearing pursuant to subpart E of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a supplemental hearing to correct the deficiencies within 15 days of receipt of the notice.

(e) If the Administrator concludes that the source is in violation of applicable legal requirements or is not entitled to an exemption, or both, and unless otherwise ordered in the decision, the source owner or operator shall submit a penalty calculation to the State within 45 days of receipt of the notice of determination.

### **Subpart E—EPA Review of State Penalty Assessments**

#### **§ 67.41 When EPA may review.**

(a) The Administrator may on his own initiative or on petition review any initial, interim, or final penalty calculation made or approved by the State or local agent to determine whether it conforms to the requirements of the Act, of part 66, of the Technical Support Document and the Instruction Manual. The Administrator shall notify the State or local agent in writing of his intention to review the calculation within 60 days of receipt by EPA of the calculation or any item considered by the State in making or approving such calculation, whichever occurs later.

(b) No such State determination shall become final until the expiration of 90 days after the Ad-

ministrator's receipt of the notice required by § 67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(c) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

#### **§ 67.42 Procedure where no formal State hearing was held.**

(a) In reviewing a penalty calculation for which no hearing conforming to the requirements of § 67.11(b)(4) was held, the Administrator shall evaluate the accuracy and adequacy of the data contained in the documents transmitted to him pursuant to § 67.11(b)(5) and shall invite comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator for reconsideration of a recalculation presented information which, if true, would have altered the amount of the penalty calculated, he shall upon notice to the State schedule a hearing in accordance with subpart F of part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the determination of the State or local agent not to hold a hearing was proper but that the penalty calculation does not conform to the requirements of the Act or of part 66, he shall by written notice revoke the determination and issue a notice of recalculation to the source owner or operator pursuant to § 66.51. A copy of the notice of recalculation shall be provided to the State or local agent. The notice of recalculation shall constitute final administrative action by EPA under authority of section 120 unless the source owner or operator petitions for reconsideration under § 66.52, in which case it shall operate as a withdrawal by EPA of its delegation of

authority to the State or local agent over the facility in question.

(d) Unless otherwise provided in the Administrator's notice, noncompliance penalties finally determined to be owed shall be paid to the State or local agent.

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#### **§ 67.43 Procedure where a formal State hearing was held.**

(a) In reviewing a penalty calculation for which a hearing conforming to § 67.11(b)(4) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and shall evaluate the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator finds that the State determination conformed to the requirements of the Act, part 66 (as modified by § 67.11), the Technical Support Document, and the Instruction Manual, his determination shall constitute a final action pursuant to section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or to the Technical Support Document or Instruction Manual, the findings shall constitute proposed findings, and the notice shall invite participants to file exceptions to his proposed findings and, if necessary, schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument, the Administrator shall affirm, modify, or revoke his proposed findings that the State or local agent's determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual. The decision shall be in writing. Notice and a copy of the decision, which shall constitute final administrative action by EPA pursuant to section 120, shall be provided to the source owner or operator and to all other participants in the State hearing.

(d) If the Administrator finds that deficiencies in the State or local agent's hearing record prevent him from determining whether the State or local agent's determination conformed to the requirements of the Act and part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual, he shall notify the State or local agent of his decision and specify what deficiencies exist and schedule a hearing in accordance with subpart F of part 66. Such notice shall operate to withdraw EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent within 15 days

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schedules a supplemental hearing to correct the deficiencies.

(e) Unless otherwise provided in the Administrator's notice to the State or local agent, any non-compliance penalties owed by the source owner or operator shall be paid to the State or local agent.

### **APPENDIX A TO PART 67—TECHNICAL SUPPORT DOCUMENT**

NOTE: EPA will make copies of appendix A available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.  
[54 FR 25259, June 20, 1989]

### **APPENDIX B TO PART 67—INSTRUCTION MANUAL**

NOTE: EPA will make copies of appendix B available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

### **APPENDIX C TO PART 67—COMPUTER PROGRAM**

NOTE: EPA will make copies of appendix C available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]